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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,940	09/22/2003	Robert M. Best	493-35-3	3324

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EXAMINER

MOSSER, ROBERT E

ART UNIT	PAPER NUMBER
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3714

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	Application No. 10/668,940	Applicant(s) BEST, ROBERT M.	
	Examiner Robert Mosser	Art Unit 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-36 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 17-36 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>11/03, 1/04, 6/04, 10/05</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION***Double Patenting***

Claims 17-36 of this application conflict with the pending claims of Applications No 10/782043, 10/791042, 10/794631, 10803385, 10/875664, 10/98773, 11/004217, 11/039768, and 11/039768. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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Claims **17-36** are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over the pending claims of copending Applications No. 10/782043, 10/791042, 10/794631, 10/803385, 10/875664, 10/98773, 11/004217, 11/039768, and 11/039768. Although the conflicting claims are not identical, they are not patentably distinct from each other because the cited Applications included elements directed to a multiplayer game system, including a player input device, the utilization of a three-dimensional environment including the control of player characters, composed of polygon elements, and a portable game device are commonly presented throughout the claims of co-pending applications.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

If the Applicant intends to maintain that these respective applications listed above are directed to distinct inventions they are requested to provide a table including at least the Application numbers as presented above, and the claim features presented in each respective application that serve to provide a distinction between each respective application and the instant application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Objections

Claims **29**, and **36** are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Specifically claim **29** set forth a program storage medium for storing a program that when executed performs –at least one- of the steps recited in claim **17** wherein claim **29** depends from claim **17**.

Accordingly claim **29** fails to further limit the invention as previously defined by claim **17** and is improper.

In similar light as claim **29**, claim **36** fails to further limit the invention as previously defined by claim **30** and is improper.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 17-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Honda (US 6570563) in view of Sasaki (US 5,577,960).

Claim 17-18, 20, 24-26, 28-31, 33, and 35-36: Honda teaches a multiplayer game system and method including:

a plurality of game apparatuses media (*Honda* Figures 1, 8) including storage media (*Honda* Col 5:33-62) and/or downloading of a program (Col 5:29-32) linked through a transmission Internet server network (*Honda* Col 12:33-13-30) including a display device operated by a plurality players;

generating game images on the plurality of game apparatuses wherein the game images include three dimensional game characters moving in a three dimensional game world viewed from variable player controlled view points (*Honda* Figure 44, Col 2:66-3:11)

generating control information on each of the respective game apparatuses to direct the movement of an avatar associated with each of the respective game apparatuses and transferring the control information from each of the respective game apparatuses to the remainder of the respective game

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apparatuses through a transmission link so as to result in the display of movement of a respective avatar on the remaining game apparatuses (*Honda* Figures 5-8)

Honda is silent regarding the portability of game apparatuses however the Examiner gives Official Notice that the use laptop and notebook computers meeting the requirements set forth by Honda in Figure 33 and further incorporating touch sensitive panels were old and well known at the time the time of claimed invention. It would have been obvious to one of ordinary skill in the art at the time of invention to have utilized a portable laptop or notebook computer incorporating a touch sensitive as a terminal device in the apparatus and method of Honda in order to expand the number of available terminal devices usable with the invention of Honda and/or ensure the inclusion of a input pointer device in the terminal of Honda.

Honda is silent regarding the use of polygon texture mapping to create the game images however in a related game invention Sasaki teaches utilization of polygon images to create game worlds and environments in player controlled worlds. It therefore would have been obvious to one of ordinary skill in the art at the time of invention to have incorporated the polygon mapping to create game images as set forth by Sasaki into the invention of Honda in order to present images of higher quality while reducing the apparatus memory required to display the image as taught by Sasaki (Sasaki Col 5:10-16).

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Claims **19, 32**: Honda additionally teaches the utilization of a personal computer (*Honda* Figures 8, 33)

Claim **21, 34**: Honda additionally teaches the utilization of an instant messaging chat window (Figure 38 "chat window", Col 1:23-44).

Claim **22**: Honda teaches the use of a network as set forth above however Honda is silent regarding the incorporation of wireless networking. The examiner gives official notice that the incorporation of wireless networking such as the 802.11 standards were old and well known at the time of claimed invention. It would have been obvious to one of ordinary skill in the art at the time of invention to have incorporated the known feature of wireless networking into the terminal of Humano in order to utilize known communication standard in interfacing with the Internet.

Claim **23**: Honda additionally teaches the use of an LCD display device (Col 14:27-30).

Claim **27**: Honda teaches the generation of images on a computer addressable display and as a computer display is comprised of pixels any image displayed on a screen must be composed of pixels. Further the Applicant's language directed to "dual LCD screen" is understood to encompass the LCD display of a first game apparatus and a second game apparatus.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Mosser whose telephone number is (571)-272-4451. The examiner can normally be reached on 8:30-4:30 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/RM/
June 20th, 2007



MARK SAGER
PRIMARY EXAMINER